IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.486 OF 2005
ALONGWITH
CRIMINAL APPLICATION NO.488 OF 2005

Poosa Venkatesh ...Applicant

V/s.
State of Maharashtra & Anr. ...Respondents

Mr.R. Sathyanarayanan for Applicant.
Mr.Y.M. Nakhawa APP for the State/Respondent No.1.
Mr.J.P. Shah with Gaurav Agarwal with Sachin Kundalkar for Respondent No.2.

CORAM : V.M. KANADE, J.

DATED : 7th SEPTEMBER, 2007.

P.C:-

1. Heard learned counsel for the Applicant/Complainant and learned counsel for the Respondent No.2.

2. The Applicant seeks leave of this Court U/s.378 of Cr.P.C. to challenge the judgment and order passed by the Metropolitan Magistrate, 30th Court, Kurla, Mumbai, who by his judgment and order, was pleased to acquit the Respondent No.2 herein of the offence U/s.138 of N.I. Act.

3. Learned counsel for the Applicant submitted that the Trial Court asked the Applicant/Orig.Complainant to produce passbook after case was closed by the Complainant. It is submitted that no opportunity was given to the Applicant to have copy of said document and that on the basis of said passbook, the Trial Court has observed that the Applicant did not have sufficient balance with the account to give the amount which is claimed to have been given by him to the Respondent No.2 and therefore, said finding is perverse and liable to be set aside. He invited my attention to the finding given by the Trial Court where the learned Magistrate has held that the Respondent No.2/Accused has refuted presumption which is raised under Section 139 of N.I. Act and had erred in holding that there was no existing debt or liability.

4. I have perused the judgment and order and also evidence adduced by the Applicant. Learned counsel for the Applicant has also invited my attention to the cross examination of the Applicant in support of his submission that he had in his cross examination, explained how the

said amount was borrowed from his friends and procured in order to give to the Respondent No.2/Accused.

5. After having perused the evidence of Applicant, in my view, considering the replies which are given by the Applicant, the presumption U/s.139 of N.I. Act has been successfully refuted. The Trial Court, accordingly, after going through the evidence on record, has recorded finding to that effect. There is no record to indicate that the passbook was submitted by the Applicant on the instructions of the Trial Court. Even if the said observations are made by the Trial Court in respect of monies which are deposited in the said account, there is sufficient evidence to show that there was no existing debt or liability. In these circumstances, no case is made out for grant to leave. Leave is refused. Appeals are dismissed. Criminal Applications are dismissed and disposed of accordingly.

V.M. KANADE, J.